Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

Reply Comments of General Communication, Inc.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

May 30, 1996

SUMMARY

When Congress passed the Telecommunications Act of 1996 (1996 Act or Act), it mandated a competitive structure and outlined the criteria under which competition is to be expanded to all areas of the country. It is important that the Commission establish national rules so that competition can be implemented throughout the country. If done properly, the benefits of competition including lower prices, new technology and increased service offerings will occur across the nation, including rural areas. Further, the Commission must ensure that any suspension or modification of the national rules for carriers with less than 2% of the nation's access lines and for rural telephone companies must be limited in time and manner. GCI supports the proposed rules of the Telecommunications Carriers for Competition (TCC).

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General Communication, Inc. (GCI) hereby submits reply comments in response to the Commission's Notice of Proposed Rulemaking (Notice).[1] The Notice seeks comment on the rules to implement Sections 251, 252 and 253 of the Telecommunications Act of 1996 (1996 Act or Act). GCI is a member of the Telecommunications Carriers for Competition (TCC) and concurs with its filing. GCI further explains and supplements its position below.

I. Introduction

Congress passed the Telecommunications Act of 1996 mandating a competitive structure and outlining the criteria under which competition is to be expanded to all areas of the country. Throughout their comments, incumbent local exchange carriers (ILECs) mischaracterize the intent of Congress. The intent of Congress is outlined in the conference report

> to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapid deployment

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[1]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, FCC 96-182, released April 19, 1996.

> of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition[2]

Competition is the hallmark of the Act. Competitors can provide competition through a variety of means. For example they can build their own network, resale the ILECs services, buy unbundled elements from the ILEC and/or interconnect with the ILEC. Contrary to the ILECs claims, the Act does not exclusively mandate facilities based competition.

The Commission must establish national rules for all ILECs so that competition can be achieved. These rules must apply to <u>all</u> ILECs. If implemented properly, competition will come to all areas of the country, particularly rural areas such as Alaska, where GCI is ready to fulfill the goals of Congress. Competition is particularly important in rural areas. Consumers in these areas should not be denied the benefits of competition including consumer choice, lower prices and advanced technology.

II. The Commission Must Establish Basic National Rules

It is vital that the Commission comply with the Act to establish regulations to implement the requirements outlined in Section 251 and 252. The goals outlined by the Act can

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[2]Telecommunications Act of 1996, Report 104-458, pp. 1.

only be achieved if the Commission adopts fairly specific national rules[3] for carriers, including rural telephone companies. National rules are necessary to give clear direction to all parties of the minimum requirements of the Act. This will assist parties in the negotiation and arbitration process.

Contrary to their claims, the ILECs possess immense bargaining power in the negotiation process as compared with the requesting carrier. Their bargaining power is being used and will continue to be used to delay the implementation of competition and frustrate the goals of the Act. Many ILECs state that any requesting carrier should be required to order service at the beginning of the negotiation process and commit to buying the requested service within one year and for a one year term. The ILECs expect this from the requesting carrier even though the requesting carrier does not know what price it will be paying or which of the requested services the ILEC will say is available. This is tantamount to starting a business but not knowing what alternative costs or potential services will be. This would be a ludicrous way to start a business.

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[3]GCI is a member of the Telecommunications Carriers for Competition (TCC) and supports adoption of the proposed rules attached to the TCC's reply comments filed herein today.

In order to enforce the provisions of the Act, the Commission must adopt specific national rules.

In thirty-four states, including Alaska, the state commission has not begun the process of moving to a competitive local marketplace. Other states have moved forward in analyzing the requirements outlined in the Act. However, no state has fully implemented the requirements of the Act. To ensure that the timelines outlined in the Act are met, the Commission must adopt national rules to aid states in their role under the Act. Otherwise, the task at hand will be overwhelming to state commissions with limited resources.

Many non-Bell Operating Company (BOCs) ILECs state that they are different than the BOCs and should not have to comply with the national requirements. They go as far to say that if there is a twenty percent reduction in profits or a ten percent or more loss of market share, they should be shielded from competition. This is a ridiculous request! Nothing in the Act protects ILECs from the requirements of the Act. The Act clearly states that competition is in the public interest and is the national policy. The goal is to protect consumers by endorsing a competitive environment over a monopoly environment, not to protect monopolies from

competition. The Commission should not punish the people who live outside of a BOC territory by protecting companies in this way. Protection of an ILEC will not foster the deployment of more advanced technologies and lower costs.

Within the rules, the Commission should bar non-disclosure agreements. Under the Act, a LEC

> shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[4]

Also, the Commission should adopt rules that encourage the consolidation of the arbitration process so that all carriers can participate because all will be affected by each and every agreement. The Commission should also adopt rules that allow any carrier to participate in all agreement approval proceedings.

Claims that the Commissions should institute individual rulemakings on interconnection, collocation, unbundled network elements and resale for rural telephone companies is a blatant attempt to delay competition. The Act provides for suspensions and modifications of the rules under certain

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[4]Section 252(i).

conditions. The national rules must be the standard.

Many small ILECs claim that they did not get anything out of the Act and therefore should be protected from competition. These arguments are irrelevant and should not be regarded.[5] However, it must be noted that these carriers have not had any constraints on entering any other telecommunications business, particularly long distance. Unicom, a subsidiary of United Utilities in Alaska, has recently received permission to enter the intrastate long distance business. ATU, the largest ILEC in Alaska, has filed an application with the Alaska Public Utilities Commission (APUC) to enter the long distance market. ILECs should not be allowed to delay or postpone any request under the Act, particular due to their unique ability to enter any other telecommunication business at any time.[6]

Another claim made by many of the ILECs is that they should be able to request reciprocal requirements from any requesting carrier. The Act specifically lays out the

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[5]These carriers made the same arguments during the pendency of the bill. Obviously, Congress did not enact this law to ensure that all carriers gained or lost something of equal value. Congress enacted the law simply to promote competition.

[6]Of course the BOCS must comply with the competitive checklist prior to providing long distance in their region.

obligations of telecommunication carriers generally,[7] local exchange carriers,[8] and incumbent local exchange carriers.[9] Congress differentiated the obligations of different carriers because the ILECs have monopoly power, whereas non-incumbent LECs do not possess monopoly power.

III. Good Faith Negotiations

National rules are needed to ensure that carriers comply with the requirement to enter into good faith negotiations. Relying on the express provisions of the Act, GCI sent a request to ATU on March 15, 1996 to begin the negotiation process under the Act. While several generally non-productive meetings have taken place, ATU, in its comments in this proceeding, stated that the eight page letter, which included technical specifications for network elements for which pricing was requested, does not qualify as a realistic basis for commencing negotiations; ostensibly because it was too detailed. When confronted on this issue at the latest meeting, ATU added the spurious arguments that the letter could not constitute a request under the Act because GCI was not yet certificated as a local carrier

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[7]Section 251(a).

[8]Section 251(b).

[9]Section 251(c).

and/or that no request under the Act was possible until the rules being developed in this docket were in effect. When coupled with ATU's apparent position in GCI's local certificate proceeding, they yield the following circular arguments: that GCI cannot make a request under the Act, entitling it to good faith negotiations, until it is certified by the state commission; that it should not be certified by the state commission until GCI's local tariffs are complete and approved, if only on an interim basis; and that the state commission cannot adequately review GCI's tariffs until negotiations are complete to ensure that GCI's retail rates are in proper relationship to its wholesale and unbundled network element costs. This spurious, "chicken and egg" conundrum is forestalled by the rules proposed by the TCC. Similar ILEC tactics currently being experienced by requesting telecommunications carriers, of "footdragging" or "stonewalling" as to network technical information, mandatory non-disclosure agreements and refusal to even consider specific terms proposed by the requesting carriers are also covered by the TCC rules.

The proposed rules expressly recognize the validity of requests made under the Act prior to the date the rules become effective. Requests made prior to the effective

date of the rules are in reliance upon the clear language of Sections 251(c) 1) and 252(a)(1) of the Act, which triggers the duty to negotiate and starts the 135 day "clock" contained in Section 252(b)(1). This distinction is important in that another spurious argument being raised by the ILECs is that Congress really meant to say that no obligation to negotiate and no arbitration timeline exists until a request is made after the effective date of the rules.

IV. Interconnection

The Commission must ensure that the minimum interconnection requirements outlined in the TCC proposed rules apply to all ILECs. ILECs should not be able to claim that ILEC cost considerations are important in this process.

Further, the Commission must guarantee that the ILEC has the burden to prove that the requested interconnection point is not technically feasible. Otherwise, the ILEC will be able to further delay competition. In that regard, if the ILEC has ever provided or now provides interconnection to any other carrier, that connection should be technically feasible and therefore available to all requesting carriers. However, interconnection points cannot be limited to current arrangements. Under the Act, the requesting carrier may

request any technically feasible point for interconnection.

Prices for interconnection must be based on direct economic costs, i.e., Total Service - Long Run Incremental Costs (TS-LRIC) Allowing ILECs to "be made whole" at the expense of the interconnector is absurd. In a competitive environment, carriers cannot be made whole. Congress has outlined a competitive environment that does not require the ILEC to be kept whole by its competitors. To do so would simply perpetuate the monopoly environment that exists today.

Many ILECs state that the requesting carrier should be required to pay all of the ILEC processing costs. This would ensure long battles over the process and the costs the ILEC would incur. Their incentive would be to stick as much of the costs of processing on the requesting carrier to deter them. This would be inconsistent with the Act and a barrier to entry.

V. Collocation

Under 251(c)(6), all ILECs are obligated to provide collocation to any requesting carrier. The Commission should adopt the rules outlined in the TCC filing which generally expands the existing Expanded Interconnection rules to all ILECs, not just Tier 1 ILECs. The Commission

must specifically state that collocation is required within or upon any of the ILECs premises. Rates must be based on TS-LRIC. Under the Act, the rates may not be determined based on rate of return or another other rate based proceeding.

VI. Unbundled Network Elements

The Commission must establish a minimum set of unbundled elements that can be combined to provide any telecommunications service. Many ILECs state that the Commission must not allow requesting carriers to combine elements to provide a service. However, they cannot point to any portion of the Act in support of such a finding. In fact the Act states

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services.[10]

Creating a restriction on combining unbundled elements by any requesting carrier would be in direct opposition of the Act.

The Commission must adopt the following minimum list of

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[10]Section 251(c)(3).

elements which must be unbundled by the ILECs:[11]

(1) Network Interface Device

(2) Loop Distribution

(3) Loop Concentrator/Multiplexer

(4) Loop Feeder

(5) Local Switching

(6) Local Operator Services[12]

(7) Local Directory Assistance

(8) Common Transport

(9) Dedicated Transport

(10) Digital Cross Connect System

(11) Data Switching Element

(12) SS7 Message Transfer and Connection Control

(13) Signaling Link Transport

(14) SCPs/Databases

(15) Tandem Switching

(16) Advanced Intelligent Network

This list of minimum elements will change over time as

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[11]These are identical to the list submitted by TCC.

[12]In the Notice, the Commission states that all customers must be able to connect to a local operator by dialing 0 or 0 plus. In Alaska, ILECs do not provide 0 or 0 plus. Those services have long been provided by Alascom and GCI, interexchange carriers in Alaska. This arrangement should not be precluded.

carriers request additional elements. The ILECs propose a much shorter list for unbundled elements as follows: local loop, switching port, local transport/special access, databases/signaling systems. The Commission should not adopt this limited list. Adoption of the limited list will ensure that issues related to unbundled elements cannot be resolved in the negotiation process but will require extensive arbitration. As previously stated, any delay will solely benefit the ILEC.

VII. Pricing

The ILECs claim that the Commission cannot create a pricing formula and that the ILECs should be able to recover their total costs including their joint, common and embedded costs. This standard is not supported by the Act. Congress specifically stated that costs cannot be determined through a rate of return or other rate based proceeding.

Further small and rural ILECs claim that any costs studies will be a burden. This is incorrect! They produce cost studies for every purpose in every jurisdiction in order to extract the last dollar out of their consumers.[13]

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[13]These studies include but are not limited to: jurisdictional cost studies, cost of service studies, rate design studies, depreciation studies, revenue requirement studies, rate base studies, cost allocation studies, rate of return studies, time and motion studies and traffic studies to

ILECs are practiced at the art of producing cost studies for any situation and this ability is easily transferable to the production of TSLRIC studies to calculate costs associated with interconnection, collocation and unbundled network elements.

VIII. Resale

All LECs are required to offer resale and have the duty not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of any telecommunications services. ILECs have additional duties regarding resale. ILECs must offer any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers at wholesale rates. To be consistent with the Act, ILECs must offer all their retail services for resale, including the following: promotions and discounts, market trials, grandfathered services, and customer specific contracts. Allowing the ILECs not to offer such services for resale would clearly contravene the purposes of the Act which requires unrestricted resale, except in limited circumstances. The ILECs plead that these service should not be offered for resale. However, the Act recognizes only

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allocate costs.

one restriction that a State commission may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers. The State must make an affirmative finding that even this restriction satisfies the requirements outlined in 251(c)(4)(B).

To determine the wholesale rate, the Act is clear that the rate is determined by starting with the ILEC retail rate, even for those services which receive an internal or external subsidy. Many ILECs claim they should not be required to offer subsidized services for resale until their rate are rebalanced, i.e., rates increased. There is absolutely no reason to delay the advent of competition until the ILEC restructures their rates or the Commission or state commission restructure applicable subsidies. Such an exercise would take many years, and thereby protect the ILECs from competition.

IX. Back Office Issues

All of the requirements outlined in the Act have a back office or operational support component. ILECs must be required to establish automated, nondiscriminatory operations support for the ordering, provisioning, training,

installation, maintenance, repair and billing by requesting carriers. These issues are part and parcel of the requests made by competitive carriers under the Act. However, the requirements to interconnect, collocate, unbundle and to resale should not be delayed due to the lack of "back office" parity. If the requesting carrier agrees, the ILEC should be required to provide interconnection, collocation, unbundled network elements and resale while quickly working on operational support issues. For example, a requesting carrier would like to purchase three unbundled network elements. However, the ILEC is not capable of receiving an automated order but is only capable of receiving that service order via fax. The requesting carrier at its choice, can purchase those unbundled network elements via fax and have the service order processed and filled. However, the Commission must stress that the ILEC will not be allowed to continue operational disparity for long.

X. The Commission Should Limit Exemptions, Suspensions and Modifications

Many of the ILECs with less than 2% of the nations access lines and rural telephone companies plead that the Commission should shield them from competition. They specifically state that Congress desired to protect smaller

LECs, especially against multi-billion dollar companies.[14] GCI disagrees with these protectionist pleas and urges the Commission to adopt the national rules outlined in the TCC reply comments that will limit the ability of States to impede competition merely to protect the ILECs. The States will specifically address weather suspensions or modification should be granted. However, the Commission must ensure that any suspension and modification that is granted is limited to the greatest extent possible and that the exemptions for rural telephone companies are lifted as soon as a requesting carrier makes a bona fide request.

The Commission should not adopt the proposed rules outlining a bona fide request as proposed by USTA and many ILECs. USTA states that a bona fide request requires that the requesting carrier offer service within one year following the agreement or arbitration with a minimum one year service period (states may require a longer period); the points where interconnection is sought must be identified network components and quantities must be

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[14]GCI has revenues of $130 million, below many carriers that have less than 2% of the access lines or are rural telephone companies. See GCI 1995 10-K. For example, SNET has over $1.5 billion in revenues, Alltel has over $1 billion in revenues, Century Telephone Co. has approximately $350 million in revenue and PTI Communications has over $300 million in revenue. See USTA Phone Facts for 1994.

specified with the date; the ILEC must be able to recover any investment required and all costs or expenses incurred to satisfy the request; and performance bonds or deposits may be required USTA claims that this will implement "Congress's desire to protect smaller LECs." These requirements should not be imposed. First, Congress did not desire to protect smaller LECs. In fact Mr. Boucher stated the following

> Rural telephone companies were exempted [under H.R. 1555] because the interconnection requirements of the checklist would impose stringent technical and economic burdens on rural companies, whose markets are in the near future unlikely to attract competitors.
>
> It was never our intention, however, to shield these companies from competition, and it is in that context that the language the gentlemen and I have agreed to is pertinent, and I would yield back to him to explain the amendment we have crafted.[15]

Competition is the national standard, not an RBOC standard.

Many ILECs group together their interest and the interest of their customers in their pleas for protection. This is not always true. Competition will encourage all providers, including the ILEC, to offer better service, through newer technology at lower prices. Customers particularly in rural America should receive these same benefits. The Commission should not buy into

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[15]Congressional Record, pp. H8454.

the argument of these carriers that an adverse impact on users will occur if the ILEC cannot recover its total costs. In fact, if rates are based on lower costs of a new provider, the user will receive great benefits. The Commission should also not adopt the standard that a request is unduly economically burdensome if the ILEC is not able to recover its total costs. Further, the Commission should not determine that technically feasibility exists through a cost benefit analysis.

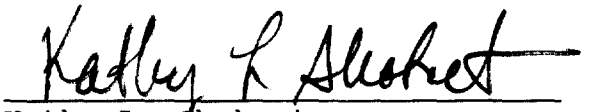
The Commission should clarify in its national guidelines that exemptions and modifications of the requirements of 251(b) and 251(c) by any LEC, including rural telephone companies, must be limited to timing issues, if limited at all. The consumers in rural America should be given a choice of carriers and should receive the benefits of competition. This is particularly necessary today and will continue in the future due to the introduction of new technologies which will allow competition to spread to all areas of the country. The benefits of competition will be ensured only if the Commission enforces the requirements of 251(b) and (c) on all applicable LECs.

XI. Conclusion

The Commission must adopt national rules to establish the minimum requirements outlined in the Act. Any exemptions, suspensions or modifications must be very limited. To allow any other outcome would be in conflict with the Act.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

May 30, 1996

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed this 30th day of May, 1995.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 30th day of May, 1996 a copy of the foregoing was sent by first class mail, postage prepaid, to the parties listed below.

Kathy L. Shobert

Janice Myles
Federal Communications Commission
1919 M St., NW
Room 544
Washington, DC 20554

ITS
2100 M St., NW
Suite 140
Washington, DC 20037